

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARY GUTHMILLER LERDAHL,

Plaintiff,

v.

INSURANCE COMPANY OF NORTH
AMERICA, a Pennsylvania corporation, d/b/a/
"ACE USA" and "ACE Recreational Marine
Insurance",

Defendant.

Case No.:

**NOTICE OF REMOVAL UNDER
28 U.S.C. § 1441(b) (DIVERSITY)**

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. § 1441 and § 1146, Insurance Company of North America ("INA") hereby removes to this Court the state court action entitled *Lerdahl v. Insurance Company of North America d/b/a ACE USA and ACE Recreational Marine Insurance*,¹ pending in the Superior Court of the State of Washington in

¹ Although the "dba" references listed in the caption are not entirely accurate, INA acknowledges it is affiliated with the ACE Group of companies and that the dbas listed in the caption should, for the purposes of removal, be treated as one affiliated entity.

NOTICE OF REMOVAL UNDER 28 U.S.C. § 1441 (b)
(DIVERSITY) - 1

LAW OFFICES OF
COZEN O'CONNOR
A PROFESSIONAL CORPORATION
999 THIRD AVENUE
SUITE 1900
SEATTLE, WASHINGTON 98104
(206) 340-1000

1 and for the County of King, under Case No. 15-09778-4-SEA (the “State Court Action”) on
 2 the grounds of diversity jurisdiction.

3 **I. PROCEDURAL HISTORY**

4 Plaintiff, Mary Guthmiller Lerdahl (“Plaintiff”), an individual, served INA with the
 5 Complaint via statutory service of process on the Insurance Commissioner of the State of
 6 Washington (the “Insurance Commissioner”) on April 27, 2015. Declaration of Kevin A.
 7 Michael (“Michael Decl.”), Ex. 1. A copy of the Complaint in the State Court Action received
 8 by the Insurance Commissioner is attached as Exhibit 2 (“Complaint”) to Michael Decl. The
 9 Insurance Commissioner received the Summons and Complaint on April 24, 2015 and mailed
 10 it to INA on April 27, 2015. Michael Decl., Exs. 1,3. Removal is thus timely under 28 U.S.C.
 11 § 1446(b) because fewer than 30 days have passed since service of the Summons and
 12 Complaint upon INA.
 13
 14

15 **II. NATURE OF DISPUTE**

16 This is an insurance coverage dispute. INA issued Yachtsman policy number
 17 Y05587311(the “Policy”) to Plaintiff for the policy period May 23, 2013 to May 23, 2014. On
 18 or about June 29, 2013, the boat flooded and sustained damage. Plaintiff filed a Loss Notice
 19 under the Policy.
 20

21 After completing a thorough investigation, INA determined that the loss was caused by
 22 the failure of the port engine raw water coolant hose. Michael Decl., Ex. 4. INA denied
 23 coverage for the claimed loss on the basis that the damage was caused by or resulted from
 24 wear and tear, gradual deterioration and neglect, all of which are expressly excluded by the
 25 Policy. *Id.* Plaintiff’s lawsuit contests INA’s coverage determination, and alleges breach of
 26 contract, violation of the Washington Administrative Code, violation of the Washington
 NOTICE OF REMOVAL UNDER 28 U.S.C. § 1441 (b)
 (DIVERSITY) - 2

1 Consumer Protection Act, RCW Ch. 19.86, *et seq.*, bad faith, negligence, and violation of the
 2 Insurance Fair Conduct Act pursuant to RCW 48.30.015. Complaint, ¶¶4-9. Plaintiff seeks
 3 actual and consequential damages, treble damages under RCW 19.86 *et seq.* up to \$25,000 per
 4 violation, treble damages pursuant to RCW 48.30 *et seq.*, and attorneys' fees, interest and
 5 costs. *Id.* at ¶10.

7 **III. GROUND FOR REMOVAL**

8 The State Court Action is a civil action over which this Court has original jurisdiction
 9 under 28 U.S.C. § 1332, and is one which may be removed to this court by Defendant INA
 10 pursuant to U.S.C. § 1441(b) because it is a civil action between citizens of different states and
 11 the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

12 **A. The Amount In Controversy Is Satisfied Because INA Has A Good Faith Basis To** 13 **Believe That Plaintiff Is Seeking Damages In Excess Of \$75,000.**

14 Under 28 U.S.C. § 1446 (c)(2)(A), the notice of removal may assert the amount in
 15 controversy if the initial pleading in the state court action seeks nonmonetary relief and/or
 16 when the plaintiff does not demand a specific sum.

17 In the State Court Action, Plaintiff alleges that INA is responsible for damage to the
 18 vessel and consequential damages. Although INA denies it owes coverage for the damages,
 19 the cost of repairs for Plaintiff's vessel were estimated by Delta Marine Industries, Inc. to be
 20 \$74,495.25. Michael Decl., Ex.4. Plaintiff also seeks treble damages under RCW 19.86 *et*
 21 *seq.* up to \$25,000 per violation, treble damages pursuant to RCW 48.30 *et seq.*, and attorneys'
 22 fees and costs. Although INA denies these allegations, based on the allegations in Plaintiff's
 23 Complaint, the estimated scope of repair, and the prayer for treble damages and attorneys'
 24 fees, Plaintiff is seeking more than \$75,000. Taking all of these factors into consideration,
 25
 26

1 INA reasonably believes Plaintiff seeks damages well in excess of the jurisdictional amount of
2 \$75,000.

3 **B. Complete Diversity Exists Because Plaintiff Is A Citizen Of Washington, Whereas**
4 **Defendant Is A Citizen Of Pennsylvania.**

5 A natural person is considered a citizen of the state where the person is domiciled – that
6 is, where the person has established a fixed habitation or abode, intending to remain there
7 permanently or indemnity. *See, e.g., Lew v. Moss*, 797 F.2d 747, 749-50 (9th Cir. 1986). The
8 Complaint filed in the State Court Action alleges that Plaintiff currently resides in Auburn,
9 King County Washington. Complaint, ¶1.1. Accordingly, Plaintiff is a citizen of Washington
10 State. INA is incorporated in Pennsylvania and maintains its principal place of business in
11 Philadelphia, Pennsylvania. Michael Decl., Ex.5. Complete diversity exists because neither
12 party is a citizen of the same state as the other.
13

14 **C. Venue Is Proper.**

15 Removal to this Court is proper because the State Court Action was filed in this Court's
16 district. *See*, 28 U.S.C. § 1441(a).
17

18 **III. STATE COURT PLEADINGS**

19 Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings and orders in the State
20 Court Action served upon INA as of May 13, 2015, are filed with this Notice of Removal of
21 Civil Action as follows: (1) Summons (Exhibit 6); (2) Complaint (Exhibit 2); and (3) Civil
22 Case Schedule Order (Exhibit 7). There are no hearings or motions currently pending in the
23 State Court Action.
24
25
26

1 **IV. CONCLUSION**

2 Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal of Civil Action will
3 be promptly filed in the State Court Action and served upon Plaintiff.

4 Based on the foregoing, INA removes to this Court the State Court Action.

5 DATED this 13th day of May, 2015.

6
7 COZEN O'CONNOR

8
9 By: /s/ Kevin A. Michael

10 Kevin A. Michael, WSBA No. 36976
Nadia A. Bugaighis, WSBA No. 45492

11 Cozen O'Connor
12 999 Third Avenue, Suite 1900
13 Wells Fargo Center
Seattle, WA 98104
14 Telephone: 206.340.1000
Toll Free Phone: 800.423.1950
15 Facsimile: 206.621.8783
Email: kmichael@cozen.com
16 bugaighis@cozen.com

17 *Attorneys for Defendant Insurance Company*
18 *of North America*

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2015, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record.

Also, on May 13, 2015, I caused the foregoing document to be served upon counsel of record at the address and in the manner described below:

Scott Breneman, WSBA No. 18486 Joseph Grube, WSBA No. 26476 Breneman Grube, PLLC 1200 5 th Avenue, Suite 625 Seattle, WA 98101 Phone: (206) 770-7606 Email: scott@bgtrial.com joe@bgtrial.com <i>Counsel for Plaintiff</i>	() Via Legal Messenger () Via Overnight Courier () Via Facsimile (X) Via U.S. Mail (X) Via E-mail
--	--

DATED this May 13, 2015.

COZEN O'CONNOR

By /s/ Leslie Nii Yamashita
 Leslie Nii Yamashita, Legal Assistant

999 Third Avenue, Suite 1900
 Wells Fargo Center
 Seattle, WA 98104
 Telephone: 206.340.1000
 Toll Free Phone: 800.423.1950
 Facsimile: 206.621.8783
 Email: lnyamashita@cozen.com

LEGAL\22804073\1 88888.8888.888/803159.000

NOTICE OF REMOVAL UNDER 28 U.S.C. § 1441 (b)
 (DIVERSITY) - 6

LAW OFFICES OF
COZEN O'CONNOR
 A PROFESSIONAL CORPORATION
 999 THIRD AVENUE
 SUITE 1900
 SEATTLE, WASHINGTON 98104
 (206) 340-1000